

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Chaves	Team: Squad #7	CCRB Case #: 202004138	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/31/2020 10:00 PM	Location of Incident: Southeast corner of East 12th Street and Broadway	Precinct: 06	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 06/09/2020 3:54 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/09/2020 3:54 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Damian Rivera	01406	922858	SRG 2
2. POM Geong Kim	11334	949167	111 PCT
3. SGT Elias Vazquez	03818	949762	SRG 2
4. DC James Mccarthy	00000	885671	PBMS
5. DI Andrew Hillery	00000	925457	SRG 1
6. LT Thomas Sheahan	00000	926109	SRG 2
7. CPT Julio Delgado	00000	918927	SRG 2
8. PO Brenda Olivierre	08944	950977	SRG 2

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against individuals.	
B. Officers	Force: Officers struck individuals with a nightstick/asp/baton.	
C. Officers	Abuse: Officers threatened individuals with the use of force.	
D. Officers	Abuse: Officers threatened § 87(2)(b) with the use of force.	
E. An officer	Force: An officer used pepper spray against § 87(2)(b)	

## Case Summary

On June 9, 2021, § 87(2)(b) filed the following complaint via the CCRB website.

At approximately 10:00 PM on May 31, 2020, § 87(2)(b) participated in an anti-police brutality protest in the blocks surrounding the intersection of East 12th Street and Broadway in Manhattan. Officers from multiple commands lined up in front of groups of protesters and marched or charged forward. The officers pushed protesters and struck them with batons (**Allegation A: Force: Physical Force:** § 87(2)(g), **Allegation B: Force: Nightstick as club:** § 87(2)(g)). § 87(2)(b) and other civilians moved on to a side street, where officers allegedly pointed pepper spray canisters at them (**Allegation C: Abuse of Authority: Threat of force:** § 87(2)(g), **Allegation D: Abuse of Authority: Threat of force:** § 87(2)(g)).

At approximately 11:20 PM, § 87(2)(b) stood with other protestors on the southeast corner of East 12th Street and Broadway. Officers dispersed the crowd, and an officer allegedly sprayed § 87(2)(b) with pepper spray (**Allegation E: Force: Pepper Spray:** § 87(2)(g)).

The investigation obtained 38 BWC videos related to this incident from the NYPD. Many of these videos capture the same events from similar positions, and much of the available video contains no information about this complaint's FADO allegations. However, Sgt. Elias Vazquez of SRG 2 recorded five BWC videos during this incident (**Board Review 01, Board Review 02, Board Review 03, Board Review 04, Board Review 05**). These videos provide significant information about the incident timeline, and Sgt. Vazquez's fifth video provides the clearest available recording of the period in which an officer reportedly pepper-sprayed § 87(2)(b) PO Brenda Olivierre of SRG 2 also recorded a BWC video that is relevant to **Allegations A and B (Board Review 06)**.

## Findings and Recommendations

**Allegation (A) Force: Officers used physical force against individuals.**

**Allegation (B) Force: Officers struck individuals with a nightstick/asp/baton.**

§ 87(2)(b) provided a detailed telephone statement on June 12, 2020 (**Board Review 07**).

In his telephone statement, § 87(2)(b) said that at approximately 10:00 p.m. on the incident date, he joined a large group of other civilians in a protest at the intersection of East 11th Street and Broadway in Manhattan. A group of civilians formed a line across Broadway on the northern side of the intersection and knelt behind orange and white construction barriers. A line of officers then rushed through the construction barriers and into the line of civilians, striking people with batons and arresting them. Many civilians fled in all directions and the scene became very chaotic.

§ 87(2)(g)  
§ 87(2)(b) Sgt. Vazquez's first BWC video (**Board Review 01**) begins with a line of SRG officers standing across the southern side of the intersection of East 12th Street and Broadway. The officers march south along Broadway, and numerous civilians walk or run

down the street away from the officers. Officers apprehend and restrain civilians with plastic flex-cuffs. Sgt. Vazquez and numerous other officers reach the northern side of the intersection of East 11th Street and Broadway, which civilians block with large orange and white construction barriers (2:30). Numerous civilians kneel in the intersection and chant at the police as the officers form a new line parallel to them. The police use an LRAD speaker to instruct the crowd to either disperse or face arrest.

As shown in multiple BWC videos, including PO Olivierre's first video (**Board Review 06**, timestamp 21:05), the police eventually advance over and past the construction barriers. Most of the civilians flee south away from the police, but officers use physical force and baton strikes against civilians who remain in the street or confront officers.

Under NYPD Patrol Guide Procedure 221-01, officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody (**Board Review 08**). Under New York Penal Law 240.20, a person is guilty of disorderly conduct when they obstruct vehicular or pedestrian traffic or congregate with other people in a public place and refuse to comply with a lawful order of the police to disperse (**Board Review 09**).

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Officers threatened individuals with the use of force.**

**Allegation (D) Abuse of Authority: Officers threatened § 87(2)(b) with the use of force.**

**Allegation (E) Force: An officer used pepper spray against § 87(2)(b)**

#### **Known facts and general descriptions:**

In his telephone statement, § 87(2)(b) said that after officers crossed the construction barrier line (see **Allegations A and B**), he ran west down East 11th Street. He became "stranded" there along with approximately 20 other civilians when a group of approximately 10 officers blocked the street and refused to allow them to return to Broadway. PO1 (an approximately 5'8" tall Black male with medium or dark skin in his mid-40s with a medium build and a short, black mustache, wearing a riot helmet) and his apparent partner (an approximately 6'2" tall white male in his 30s with a medium build) were part of this group of officers. At an unknown point during these 30 to 45 minutes, PO1 and the rest of the nearby officers all took out their belt-mounted pepper spray canisters and pointed them at the civilians to deter them from moving back towards Broadway. None of the officers deployed pepper spray at this point. Eventually, the officers allowed § 87(2)(b) and the other civilians to walk back to Broadway. § 87(2)(b) walked north along Broadway to the southeast corner

of East 12th Street. Numerous civilians stood on the intersection's four corners but did not take any specific actions. § 87(2)(b) stood on the southeast corner under construction scaffolding, looking around and preparing to head home. There were multiple people sitting in the scaffolding's crossbar intersections and at least one person standing on the scaffolding platform.

At first, there was an unknown number of officers standing in the intersection, including PO1 and his apparent partner. Then, approximately four to six police vans drove into the intersection and several dozen new officers got out. Some of the vans came from the south while others came from the north. Many of the officers formed a line running from the intersection's northeast corner across East 12th Street to the southeast corner. The officers blocking East 12th Street faced east. All the officers on scene wore blue riot helmets and carried long batons. Some of the newly arrived officers carried zip ties and some of them appeared more heavily armored than others. § 87(2)(b) did not see any officers with bicycles or wearing reflective bicycling clothing, or any plainclothes officers. The only distinctive new officer was wearing a bright, multicolored backpack. The backpack looked more like a child's school bag than a piece of tactical or militarized equipment and was covered in tie-dyed or blended colors.

A crowd of civilians began to form and grow at the intersection in response to the arrival of the large number of new officers. Members of the crowd appeared to interact with officers but § 87(2)(b) did not recall the officers giving anyone specific orders at first. Then, a white-shirted officer approached the people sitting on the scaffolding crossbar. § 87(2)(b) did not hear this officer's conversation with these people, but it appeared as though he told the people to get off the scaffolding. Eventually the officer reached up to pull the people down, and this prompted civilians from the crowd to approach more closely. A "scuffle" ensued but it did not appear as though officers arrested anyone at this point.

The officers positioned across East 12th Street moved forward as a line, rushing towards the protestors and pushing them east. Simultaneously, PO1 took out his pepper spray canister and sprayed § 87(2)(b) with it. This happened too quickly for § 87(2)(b) to react or avoid the spray. PO1 did not give § 87(2)(b) any physical or verbal orders or warnings before deploying the spray. § 87(2)(b) was approximately four feet away from PO1 when he got sprayed. At the moment he was pepper sprayed, § 87(2)(b) was standing on the sidewalk under the scaffolding, exactly on the southeast corner of the intersection, facing west towards Broadway, with Strand Bookstore to his right across East 12th Street. PO1's apparent partner was standing next to PO1, and the officer with the bright backpack was standing behind the other two officers.

#### **BWC:**

The investigation obtained no video of the portion of the incident where § 87(2)(b) described being "stranded" on East 11th Street (BWC, surveillance, smartphone, etc.). However, Sgt. Vazquez's fifth BWC video (**Board Review 05**) specifically corroborates numerous elements of § 87(2)(b)'s statement regarding the minutes leading up to his alleged pepper spraying. Starting at timestamp 1:00, Sgt. Vazquez approaches the eastern side of the incident intersection, where a large group of officers in riot helmets are standing across the driving lanes of East 12th Street. At 1:25, an officer is visible on the right-hand side of the video frame wearing a brightly colored,

paisley print backpack. At 1:55, a male civilian with dark skin in a white t-shirt is visible standing against the scaffolding at a height that suggests he has climbed up on top of something (his feet are not visible). Numerous white-shirted supervisors (some of which have been identified, see below) are visible on scene. At 4:00, an officer calls out “Get around that thing and clear the corner,” and numerous officers surge forward, moving east along East 12th Street and south along Broadway’s eastern sidewalk. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

The video shows numerous officers standing and walking in the area where § 87(2)(b) described being. However, Sgt. Vazquez’s positions and movements, the number of officers’ bodies, the low light, and the crowd’s movements make it impossible to identify specific officers. The video does not show an officer matching the basic description of PO1 that § 87(2)(b) provided (a Black male of average stature with a mustache). As the incident appears to escalate (officers “clearing the corner”), Sgt. Vasquez walks south along Broadway and his camera does not show the area in which § 87(2)(b) was allegedly pepper-sprayed. The investigation reviewed the other 37 available BWC videos, but none of them capture this portion of the incident from a useful angle.

### **NYPD Documents Reviewed**

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

By his own account, § 87(2)(b) was not arrested or summonsed during this incident. A request for use-of-force reports (TRIs) referencing him returned negative results, which is consistent with his narrative in that no officer had occasion to learn or record his name.

### **Concurrent Investigations**

§ 87(2)(b) filed this complaint directly with the CCRB. On October 8, 2021, the undersigned investigator spoke to a supervisor in the IAB liaison office and confirmed that the NYPD did not investigate this incident (see IA #59).

### **Ranking Officers**

DC James McCarthy of Patrol Boro Manhattan South was interviewed for both this incident and CCRB complaint number 202003712, which happened approximately an hour earlier in the same area. However, DC McCarthy did not recall whether he was on scene for this incident, and there is no video or other evidence indicating that he was.

DI Andrew Hillery of SRG 1 was interviewed for this incident, confirmed that he was on scene, and identified himself in Sgt. Vazquez’s fifth BWC video. While he was the highest-ranking officer that the investigation has identified as on scene for this incident, he identified Cpt. Julio Delgado of SRG 2 in the same video and described Cpt. Delgado as

having moment-to-moment control of the scene. DI Hillery was aware of Cpt. Delgado's actions and commands over this portion of the incident and approved of them as appropriate given the conditions. He allowed Cpt. Delgado, as a subordinate member of service, to issue commands to the SRG officers that Cpt. Delgado was assigned and familiar with.

While both DI Hillery and Cpt. Delgado appeared, based on the BWC video, to have supervised officers as the incident escalated, and Cpt. Delgado appears to have given the verbal order to “clear the corner,” there is no evidence that either officer directed other officers to use pepper spray. As a result, the investigation did not interview Cpt. Delgado. See below for details of DI Hillery’s interview.

### **Officers Interviewed**

DC McCarthy was interviewed on October 14, 2020 (**Board Review 11**). Sgt. Vazquez was interviewed on December 16, 2020 (**Board Review 12**). DI Hillery was interviewed on March 10, 2021 (**Board Review 13**).

None of the officers admitted any familiarity with § 87(2)(b) by name or description. None of them described taking any action that indicated they were present when officers allegedly threatened to pepper-spray § 87(2)(b) and nearby civilians.

The officers all provided very general accounts of the incident evening, citing the number of protests they responded to in the days immediately before and after this incident and the scale and chaos of each protest as factors that clouded their memories. The officers all stated that on the incident evening, the NYPD responded to protests by organizing and deploying Mobile Field Forces (MFFs) of one or two supervisors and eight police officers operating from a marked van. The MFFs were drawn from commands across the city, with officers responding to protests far outside their usual command (or even patrol boro) boundaries. In addition to MFFs, specialized units like SRG (both foot and bicycle officers) responded as needed. It was common for patrol officers from various Precincts to respond to protests alongside SRG officers, and, for this incident, Sgt. Vazquez pointed out patrol officers standing at the incident intersection in his fifth BWC video. He was unable to identify any of the officers by name, command, or any other factor, however, and said that because they were not part of SRG he was unfamiliar with them. When shown Sgt. Vazquez’s fifth BWC video, all the officers acknowledged being able to see the officer in a paisley school backpack, but none of them knew who that officer was, what command or assignment he was part of, or why he was wearing an apparently non-standard piece of equipment.

In their interviews, Sgt. Vazquez and DI Hillery provided consistent accounts of the minutes leading up to officers dispersing civilians at East 12<sup>th</sup> Street and Broadway. There were numerous protesters at the location, some standing on the sidewalk and some blocking the street. Many were screaming. Some were climbing on scaffolding, and others threw objects at officers. DI Hillery considered all the un-apprehended protesters on-scene to be committing unlawful assembly. They had no right to be at the location, as they were part of a group committing various acts of criminal mischief and causing public alarm. SRG officers used an LRAD to repeatedly instruct the civilians to disperse or face arrest.

After several minutes of these conditions, Cpt. Delgado ordered officers to “clear the corner.” While DI Hillery did not give this order himself, he was present when Cpt.

Delgado gave it and approved of Cpt. Delgado's decision. Sgt. Vazquez did not give any officers orders regarding the protesters' dispersal.

### **Allegation Recitation and Disposition**

Over the preceding stages of the incident, officers repeatedly moved or dispersed civilian groups with physical force but did not use any pepper spray. § 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Officers threatened individuals with the use of force.

Allegation (D) Abuse of Authority: Officers threatened § 87(2)(b) with the use of force.

Allegation (E) Force: An officer used pepper spray against § 87(2)(b)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b)
- 
- 
- 
- 
- 
- 
- 

### **Mediation, Civil and Criminal Histories**

- This complaint was unsuitable for mediation.
- A request for any Notice of Claim filed regarding this incident has been submitted to the New York City Comptroller's Office, and the results will be added to the case file upon receipt.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of criminal convictions in New York City (**Board Review 15**).

Squad: 7

Investigator: Matt Chaves SI Matt Chaves 11/30/2021

	Signature	Print Title & Name	Date
Squad Leader:	_____	Manager Vanessa Rosen	11/30/2021
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date